IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.8421 OF 2004

Shri Subhash Laxman Bajare, .. Petitioner

Vs

1. Shri Vishnu alias Rangnath Bajare and ors. .. Respondents

Mr Macchindra A.Patil, for the petitioner.

CORAM : D.B.BHOSALE,J.

DATE : 28th October, 2004.

PC:

1. Heard the learned counsel for the petitioner.

2. By this petition, the petitioner has challenged the order dated 16.3.2004 by which his application for appointment of Court commissioner has been rejected. The trial Court while rejecting the application has made the following observations:

> "It is not disputed that whether the said "Samadhis" and "Smashanbhumi" is in land bearing block no.26 or not. Moreover, the plaintiff has not pleaded about the existence of the same in his plaint. Under these circumstances, the Court Commissioner cannot be appointed to ascertain the

circumstances which are not pleaded by the plaintiff in his plaint. Moreover, I am of the opinion that the plaintiff is trying to collect evidence at the hands of the Court. For above said reasons the application stands rejected."

3. Considering the aforementioned observations made by the learned Judge and other material placed before, I find no reason to interfere with the order passed by the Court below in extremely limited jurisdiction of this Court under Article 227 of the Constitution of India. The writ petition, therefore, fails and is dismissed as such.

(D.B.BHOSALE, J.)